

1 The Honorable Marsha J. Pechman  
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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT CARSON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:18-cv-05858-MJP

AGREED PRETRIAL ORDER

I. JURISDICTION

Jurisdiction in this matter is premised upon the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b) and 2679(b)(1). The United States has waived sovereign immunity for the negligent or wrongful acts or omissions of any federal employee acting within the scope of employment, under circumstances where the United States, if a private person, would be liable to the plaintiff in accordance with the law of the place where the act or omission occurred. 28 U.S.C. §§ 1346(b). The parties agree that Washington state law substantively governs the claim to be adjudicated at trial in this matter.

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## II. CLAIMS AND DEFENSES

**Plaintiff will pursue the following claims for relief:**

Monetary damages for the property damages to his car; monetary damages for medical specials; and monetary damages for his general damages of past, present and future pain and suffering, disability, loss of enjoyment of life.

**The United States will pursue the following affirmative defenses/claims for relief:**

1. Plaintiff's injuries and damages were not proximately caused by the negligent or wrongful act of an employee of the United States. Specifically, Plaintiff's current lumbar and cervical pain is caused by a pre-existing degenerative joint disease and ossification of posterior longitudinal ligament ("OPLL"), unrelated to the motor vehicle collision, but symptomatic at the time.

2. To the extent this Court finds that the current spinal pain is causally related to the collision, Plaintiff has failed to mitigate his damages with respect to the same. Specifically, Plaintiff has repeatedly declined both diagnostic and therapeutic treatment options targeted at relieving his cervical and lumbar pain. Such declinations are unreasonable and have more likely than not adversely affected his recovery. *See Fox v. Evans*, 127 Wash. App. 300, 306 (2005).

3. Plaintiff is not entitled to \$2,220.01 for property damage to his 1993 Geo Metro because the only repair estimate disclosed sets forth repairs beyond those caused by the subject collision and, further, Plaintiff voluntarily salvaged the vehicle for parts in 2018.

4. Plaintiff's total damages must be limited to no more than \$164,964.44, the only damage computation previously disclosed during discovery. *See* FRCP 26(a)(1)(A)(iii), 26(e)(1)(A) and 37(c)(1).

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### III. ADMITTED FACTS

1. Plaintiff was involved in a motor vehicle collision with a United States Postal Service (“USPS”) employee on January 15, 2017, at approximately 1:11PM.

2. The collision occurred at the intersection of E. Washington Street and N. Rhodefer Road in Sequim, Washington.

3. The USPS employee was executing a right-hand turn from a stop sign on N. Rhodefer Road when he collided with Plaintiff.

4. Plaintiff was traveling east on E. Washington Street.

5. The USPS employee collided with Plaintiff's rear passenger's side door.

6. The USPS employee was traveling approximately 2-5 MPH.

7. Plaintiff was traveling approximately 30 MPH.

8. Both drivers declined medical treatment at the scene.

9. The United States admits that the employee failed to

thus caused the collision, but disputes the nature and extent of Plaintiff's damages.

#### **IV. ISSUES OF LAW**

### **The following issues of law must be determined by the Court:**

1. Has Plaintiff proved by a preponderance of the evidence that he is entitled to the full repair estimate of \$2,220.01 for his 1993 Geo Metro?

2. Has Plaintiff proved by a preponderance of the evidence that his claimed past medical expenses were reasonable, necessary, and related to the subject collision?

3. Has Plaintiff proved by a preponderance of the evidence that he requires future medical care and that any such care is reasonable, necessary, and related to the subject collision?

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4. Has Plaintiff proved by a preponderance of the evidence that he experienced pain, disability, and suffering as a result of the collision and/or will with reasonable probability, continue to experience pain, disability, and suffering in the future?

5. Has the United States proved by a preponderance of the evidence that Plaintiff failed to mitigate his damages?

## V. EXPERT WITNESSES

**The following expert witnesses may be called by Plaintiff at trial:**

Donna Moore, M.D. – *Will Testify*  
Medical Consulting Associates, PLLC  
9226 Bay Shore Drive NW, Suite 230  
Silverdale, WA 98383  
Tel. (360) 692-6202

Dr. Moore is a Physical Medicine and Rehabilitation physician who conducted an Independent Medical Examination on Plaintiff on October 22, 2018, at the request of Plaintiff's attorney, Greg S. Memovich. She will testify regarding Plaintiff's medical specials and Plaintiff's treatment, injuries, pain, suffering, disabilities and possible future treatment, pain, suffering, and disabilities.

**The following expert witnesses may be called by the United States at trial:**

Joshua Shatsky, M.D. – *Will Testify*  
WestSound Orthopaedics - Silverdale  
4409 NW Anderson Hill Road  
Silverdale, WA 98383  
Tel. (360) 698-6630

Dr. Shatsky is an orthopedic surgeon employed by WestSound Orthopaedics, and is among Plaintiff's treating physicians. Dr. Shatsky may be called by the United States to testify as to his multiple examinations, observations, interactions, and Plaintiff's prognosis as of January 2018, including recommendations made regarding future care and treatment, which Plaintiff

1 declined. He may also be asked to interpret the MRI of Plaintiff's spine from May 2017 and  
2 testify regarding its significance from an orthopedic perspective.

3 Wilson Chang, M.D. – *Will Testify*  
4 Swedish Pain Services  
5 601 Broadway, Suite 530  
Seattle, WA 98122  
Tel. (206) 386-2013

6 Dr. Chang is a Physical Medicine and Rehabilitation Specialist employed by Swedish  
7 Pain Services, and was among Plaintiff's treating physicians. Dr. Chang may be called by the  
8 United States to testify as to his multiple examinations, observations, interactions, and Plaintiff's  
9 prognosis as of October 2021. Dr. Chang will discuss the various diagnostic and therapeutic  
10 treatment options recommended but rejected by Plaintiff during his treatment of him. Dr. Chang  
11 will discuss Plaintiff's continued nonadherence to pain medications and belligerent behavior with  
12 his staff that ultimately lead to Plaintiff's dismissal from his services.

13 **VI. OTHER WITNESSES**

14 **The following lay witnesses may be called by Plaintiff at trial:**

15 1. Robert Carson  
16 c/o Greg Memovich, Counsel for Plaintiff

17 Will testify regarding liability and damages.

18 **The following lay witnesses may be called by the United States at trial:**

19 2. Jason Robotkay – *Possible Witness Only*  
c/o Erin K. Hoar, Assistant United States Attorney, Counsel for United States

20 Mr. Robotkay was the driver of the U.S. Postal Service vehicle that collided with Mr.  
21 Carson's vehicle on January 15, 2017. Mr. Robotkay may be called by the United States to rebut  
22 any claims by Plaintiff regarding the mechanism of the collision and Plaintiff's presentation at  
23 the scene.

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1                   3. Detective Rick Larsen, Sequim Police Department – *Possible Witness Only*  
2                   c/o Sequim Police Department, 152 W. Cedar Street, Sequim, WA 98382

3                   Detective Larsen was the investigating officer for the Sequim Police Department who  
4                   was dispatched to the collision on January 15, 2017. Detective Larsen may be called by the  
5                   United States to testify to his observations of the vehicles, the condition of the vehicles, and  
6                   Plaintiff's presentation at the scene.

7                   **VII. EXHIBITS**

8                   **Plaintiff may offer the following exhibits at trial:**

No.	Description	Authenticity	Admissibility	Objection	Admitted
1	Police Report	Stipulated	Stipulated		
2	Auto Body Damage Estimate	Disputed	Disputed	FRE 602, 901, 802	
3	Medical Expense Summary FRE 1006	Stipulated	Disputed	FRE 802	
4	InHealth Imaging 05.01.2017 MRI Report	Stipulated	Stipulated		
5	Jefferson Health Care 05.01.2017 Medical Bill	Stipulated	Stipulated		
6	Jefferson Health Care Physical Therapy Bills 07.07.17 thru 08.11.2017	Stipulated	Stipulated		
7	Peninsula Community Health Services Bills 01.19.2017 thru 01.25.2018	Stipulated	Stipulated		
8	Kitsap Physical Therapy Medical Bills 01.26.2017 thru 04.06.2017	Stipulated	Stipulated		
9	InHealth Imaging 05.01.2017 MRI Medical Bill	Stipulated	Stipulated		
10	WestSound Orthopaedics Medical Bills 06.21.2017 thru 01.29.2018	Stipulated	Stipulated		
11	Swedish Medical Center Medical Bills 11.19.2018 thru current	Stipulated	Stipulated		

**The United States may offer the following exhibits at trial, in addition to any exhibits identified by Plaintiff:**

No.	Description	Authenticity	Admissibility	Objection	Admitted
200	Pertinent Portions of Jefferson Healthcare Records Dated 4/4/14 (Carson_MedRecs_000406-000413)	Stipulated	Stipulated		
201	Pertinent Portions of Jefferson Healthcare Records Dated 4/9/14 (Carson_MedRecs_000425-000431)	Stipulated	Stipulated		
202	Pertinent Portions of Pulmonary & Sleep Medicine Records Dated 7/7/14 (Carson_MedRecs_000300-000303)	Stipulated	Subject to foundation	FRE 401, 403, 602, 802	
203	Pertinent Portions of Jefferson Healthcare Hospital ER Records Dated 1/15/17 (Carson_MedRecs_000459-000467)	Stipulated	Stipulated		
204	Kitsap PT Records Dated 1/26/17 to 4/6/17 (Carson_MedRecs_000085-000093)	Stipulated	Stipulated		
205	WestSound Orthopaedics Records Dated 6/21/17 to 1/29/18 (Carson_MedRecs_000003-000024)	Stipulated	Stipulated		
206	Jefferson Community Healthcare PT Discharge Summary Dated 8/11/17 (Carson_MedRecs_000603-000605)	Stipulated	Stipulated		
207	Olympic Medical Center PT Discharge Summary Dated 5/9/18 (Carson_MedRecs_000757)	Stipulated	Stipulated		

No.	Description	Authenticity	Admissibility	Objection	Admitted
208	Pertinent Portions of Peak Performance PT Records Dated 10/15/18 to 1/16/19 (Carson_MedRecs_000123-000159)	Stipulated	Subject to foundation	FRE 401, 403, 602, 802	
209	Swedish Pain Management Records Dated 11/19/18 (Carson_MedRecs_000338-000344)	Stipulated	Stipulated		
210	Swedish Pain Management Records Dated 3/13/19 (Carson_MedRecs_000356-000361)	Stipulated	Stipulated		
211	Swedish Pain Management Records Dated 4/15/19 (Carson_MedRecs_000372-000377)	Stipulated	Stipulated		
212	Swedish Pain Management Records Dated 5/15/19 (Carson_MedRecs_000372-000377)	Stipulated	Stipulated		
213	Swedish Pain Management Records Dated 6/11/19 (Carson_MedRecs_000886-000890)	Stipulated	Stipulated		
214	Swedish Pain Management Records Dated 7/17/19 (Carson_MedRecs_000863-000866)	Stipulated	Stipulated		
215	Swedish Spine, Sports & Musculoskeletal Medicine Records Dated 9/4/19 (Carson_MedRecs_001148-001150)	Stipulated	Stipulated		
216	Swedish Pain Management Records Dated 11/15/19 (Carson_MedRecs_000847-000850)	Stipulated	Stipulated		
217	Swedish Pain Management Records Dated 1/7/20 (Carson_MedRecs_000828-000831)	Stipulated	Stipulated		

No.	Description	Authenticity	Admissibility	Objection	Admitted
218	Swedish Pain Management Records Dated 4/6/20 (Carson_MedRecs_000823-000824)	Stipulated	Stipulated		
219	Swedish Pain Management Records Dated 10/28/20 (Carson_MedRecs_000809)	Stipulated	Stipulated		
220	Sound Pain Alliance Records Dated 12/10/20 (Carson_MedRecs_001119-001122)	Stipulated	Stipulated		
221	Anesis Spine & Pain Care Records Dated 2/18/21 (Carson_MedRecs_001101-001104)	Stipulated	Stipulated		
222	Anesis Spine & Pain Care Records Dated 3/22/21 (Carson_MedRecs_001095-001099)	Stipulated	Stipulated		

### VIII. DEPOSITION TRANSCRIPTS

Drs. Moore and Chang gave perpetuation depositions, in part because of the COVID crisis and uncertainties regarding live court proceedings. The parties prefer that Drs. Moore and Chang testify live, via Zoom, rather than relying on their perpetuation depositions. However, Plaintiff may seek admission of either or both transcripts in the event either witness is unavailable to testify. The United States intends to subpoena Dr. Chang for live testimony and maintains that deposition testimony should only be proffered in the event either witness is truly unavailable within the meaning of *Fed. R. Civ. P.* 32(a)(4).

Plaintiff may use portions of Dr. Chang's deposition transcripts to refresh his recollection or for impeachment purposes.

The United States may offer portions of the deposition transcripts of Plaintiff and/or Donna Moore, M.D., for impeachment purposes per *Fed. R. Civ. P.* 32(a)(2). Furthermore, the United States may use the deposition of Dr. Chang to refresh his recollection.

## **ACTION BY THE COURT**

- (a) This case is schedule for trial without a jury on July 15, 2021, at 9:00AM.
- (b) Trial briefs shall be submitted to the Court on or before July 12, 2021.
- (c) Proposed Findings of Fact and Conclusions of Law must be submitted to the Court on or before July 12, 2021.
- (d) This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 30th day of June, 2021.

Wesley P. Beckman

Marsha J. Pechman  
United States Senior District Judge

**APPROVED AS TO FORM**

TESSA M. GORMAN  
Acting United States Attorney

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